

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUSTIN REESE, STEVEN COX, MICAH
WHITTENBORN and SHELBY BALL, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

DYCOM INDUSTRIES, INC., a Florida
corporation; PRINCE TELECOM, LLC, a
Delaware limited liability company, d/b/a
PRINCE TELECOM, INC.; and PRINCE
TELECOM HOLDINGS, INC., a Delaware
corporation,

Defendants.

COMPLAINT – CLASS ACTION

CLASS ACTION COMPLAINT FOR
DAMAGES AND RESTITUTION

JURY DEMAND

Plaintiffs, by their undersigned attorneys, for their class action complaint against
Defendants allege as follows:

I. INTRODUCTION

1.1 Nature of Action. Plaintiffs Justin Reese, Steven Cox, Micah Whittenborn, and
Shelby Ball (“Plaintiffs”) bring this action against Defendants Dycom Industries, Inc., Prince
Telecom, LLC, doing business as Prince Telecom, Inc., and Prince Telecom Holdings, Inc.
(collectively “Defendants”) for engaging in a systematic scheme of wage and hour abuse

1 against non-managerial installation technicians in the State of Washington. This scheme has
 2 involved, among other things, failing to pay non-managerial installation technicians for all
 3 hours worked, including overtime, failing to provide the technicians with rest and meal periods,
 4 making improper deductions from the wages of the technicians, and failing to compensate the
 5 technicians for paid time off benefits they have earned but not yet received at the time
 6 employment is terminated.

7 **II. JURISDICTION AND VENUE**

8 2.1 Subject-Matter Jurisdiction. This Court has original jurisdiction over all claims
 9 asserted in the action pursuant to 28 U.S.C. § 1332. Plaintiff Reese is a citizen of Oklahoma,
 10 and Defendant Dycom Industries, Inc. is a citizen of Florida. Likewise, Plaintiff Cox, Plaintiff
 11 Whittenborn, Plaintiff Ball and other Class members are citizens of Washington, whereas
 12 Defendant Dycom Industries, Inc. is a citizen of Florida and Defendants Prince Telecom, LLC,
 13 doing business as Prince Telecom, Inc., and Prince Telecom Holdings, Inc. are both citizens of
 14 Delaware. Furthermore, the matter in controversy exceeds the sum or value of \$5,000,000.

15 2.2 Personal Jurisdiction. This Court also has personal jurisdiction over all
 16 Defendants. Defendants regularly conduct business and employ workers in Washington State.
 17 Thus, Defendants have obtained the benefits of the laws of Washington as well as
 18 Washington's commercial and labor markets.

19 2.3 Venue. Venue is proper in King County because Defendants reside and transact
 20 business in King County.

21 2.4 Governing Law. The claims of Plaintiffs and the Class members asserted in this
 22 class action complaint are brought solely under state law causes of action and are governed
 23 exclusively by Washington law. The claims of Plaintiffs and the Class members are individual
 24 claims and do not unite or enforce a single title or right to which Plaintiffs and the Class have a
 25 common and undivided interest.
 26

III. PARTIES

3.1 Plaintiff Justin Reese. Plaintiff Reese worked for Defendants as a non-managerial installation technician in Washington State from approximately July 2006 to July 2008. During that time, Defendants failed to pay Plaintiff Reese for all of the time that he worked (including overtime), denied him the rest and meal periods to which he was entitled, and wrongfully deducted expenses from his wages.

3.2 Plaintiff Steven Cox. Plaintiff Cox worked for Defendants as a non-managerial installation technician in Washington State from approximately October 2005 to August 2008. During that time, Defendants failed to pay Plaintiff Cox for all of the time that he worked (including overtime), denied him the rest and meal periods to which he was entitled, and wrongfully deducted expenses from his wages.

3.3 Plaintiff Micah Whittenborn. Plaintiff Whittenborn worked for Defendants as a non-managerial installation technician in Washington State from approximately January 2005 to May 2007. During that time, Defendants failed to pay Plaintiff Whittenborn for all of the time that he worked (including overtime), denied him the rest and meal periods to which he was entitled, wrongfully deducted expenses from his wages, and failed to compensate him for paid time off benefits he had earned but not yet received at the time his employment was terminated.

3.4 Plaintiff Shelby Ball. Plaintiff Ball worked for Defendants as a non-managerial installation technician in Washington State from approximately February 2000 to February 2008. During that time, Defendants failed to pay Plaintiff Ball for all of the time that he worked (including overtime), denied him the rest and meal periods to which he was entitled, and wrongfully deducted expenses from his wages.

3.5 Defendant Dycom Industries, Inc. Dycom Industries, Inc. is a Florida corporation with its headquarters in Palm Beach Gardens, Florida. Dycom Industries, Inc. has several offices in Washington and conducts business throughout the State, including King

1 County. Dycom Industries, Inc. employs hundreds of non-managerial installation technicians
2 in Washington State.

3 3.6 Defendant Prince Telecom, LLC, doing business as Prince Telecom, Inc. Prince
4 Telecom, LLC, doing business as Prince Telecom, Inc., is a Delaware limited liability company
5 with its headquarters in New Castle, Delaware. Prince Telecom, LLC has several offices in
6 Washington and conducts business throughout the State, including King County. Prince
7 Telecom, Inc. employs hundreds of non-managerial installation technicians in Washington
8 State.

9 3.7 Defendant Prince Telecom Holdings, Inc. Prince Telecom Holdings, Inc. is a
10 Delaware corporation with its headquarters in New Castle, Delaware. Prince Telecom
11 Holdings, Inc. has several offices in Washington and conducts business throughout the State,
12 including King County. Prince Telecom Holdings, Inc. employs hundreds of non-managerial
13 installation technicians in Washington State.

14 IV. CLASS ACTION ALLEGATIONS

15 4.1 Class Definition: Pursuant to Rule 23 of the Federal Rules of Civil Procedure,
16 Plaintiffs brings this case as a class action on behalf of a Class defined as follows:

17 All current and former employees of Defendants who
18 worked as non-managerial installation technicians in the
19 state of Washington at any time from May 1, 2003
20 through the date of final disposition of this action.

21 4.2 Excluded from the Class are Defendants, any entity in which Defendants have a
22 controlling interest or which has a controlling interest in Defendants, and Defendants' legal
23 representatives, assignees, and successors. Also excluded are the judge to whom this case is
24 assigned and any member of the judge's immediate family.

25 4.3 Numerosity. Plaintiffs believe there are hundreds of current and former non-
26 managerial installation technicians composing the Class. The members of the Class are so
numerous that joinder of all members is impracticable. Moreover, the disposition of the claims
of the Class in a single action will provide substantial benefits to all parties and the Court.

1 4.4 Commonality. There are numerous questions of law and fact common to
2 Plaintiffs and Class members. These questions include, but are not limited to, the following:

3 a. Whether Defendants have engaged in a common course of failing to
4 compensate non-managerial installation technicians for all hours worked, including overtime;

5 b. Whether Defendants have engaged in a common course of requiring or
6 permitting non-managerial installation technicians to work off the clock without compensation;

7 c. Whether Defendants have engaged in a common course of requiring or
8 permitting non-managerial installation technicians not to report all hours worked;

9 d. Whether Defendants have engaged in a common course of failing to
10 maintain true and accurate time records for all hours worked by non-managerial installation
11 technicians;

12 e. Whether Defendants have engaged in a common course of altering the
13 time records of non-managerial installation technicians;

14 f. Whether Defendants have engaged in a common course of failing to
15 provide non-managerial installation technicians with rest periods;

16 g. Whether Defendants have engaged in a common course of failing to
17 provide non-managerial installation technicians with meal periods;

18 h. Whether Defendants have engaged in a common course of making
19 unlawful deductions from the wages of non-managerial installation technicians;

20 i. Whether Defendants have engaged in a common course of failing to
21 compensate to non-managerial installation technicians for paid time off benefits they have
22 earned but not yet received at the time employment is terminated;

23 j. Whether Defendants have violated RCW 49.46.130;

24 k. Whether Defendants have violated WAC 296-128-550;

25 l. Whether Defendants have violated RCW 49.46.090;

26 m. Whether Defendants have violated WAC 296-126-021;

- n. Whether Defendants have violated RCW 49.12.020;
- o. Whether Defendants have violated WAC 296-126-092;
- p. Whether Defendants have violated RCW 49.48.010;
- q. Whether Defendants have violated WAC 296-126-025;
- r. Whether Defendants have violated WAC 296-126-028;
- s. Whether Defendants have violated RCW 49.52.050;
- t. Whether Defendants' paid time off policy constituted a unilateral contract offer to non-managerial installation technicians;
- u. Whether non-managerial installation technicians accepted and provided consideration for that offer by performing work for Defendants;
- v. Whether Defendants breached the contract by failing to compensation non-managerial installation technicians for paid time off benefits that had been earned but not yet received at the time employment terminated;
- w. Whether Defendants have violated RCW 19.86.010 – .920; and
- x. The nature and extent of Class-wide injury and the measure of compensation for such injury.

4.5 Typicality. The claims of the representative Plaintiffs are typical of the claims of the Class. The Plaintiffs worked for Defendants as non-managerial installation technicians and are members of the proposed Class. Plaintiffs' claims, like the claims of the Class, arise out of the same common course of conduct by Defendants and are based on the same legal and remedial theories.

4.6 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained competent and capable attorneys who are experienced trial lawyers with significant experience in complex and class action litigation, including employment law. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the

1 Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have
2 interests that are contrary to or that conflict with those of the proposed Class.

3 4.7 Predominance. Defendants have engaged in a common course of wage and hour
4 abuse toward Plaintiffs and members of the Class. The common issues arising from this
5 conduct that affect Plaintiffs and members of the Class predominate over any individual issues.
6 Adjudication of these common issues in a single action has important and desirable advantages
7 of judicial economy.

8 4.8 Superiority. Plaintiffs and Class members have suffered and will continue to
9 suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. Absent a
10 class action, however, most Class members likely would find the cost of litigating their claims
11 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
12 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
13 provides a forum for small claimants, and deters illegal activities. Plaintiffs and their counsel
14 are unaware of any litigation that has already been commenced concerning Defendants' wage
15 and hour abuses in Washington. Litigation of the claims should occur in this Court as all
16 claims are brought under Washington law. There will be no significant difficulty in the
17 management of this case as a class action. The Class members are readily identifiable from
18 Defendants' records.

19 V. SUMMARY OF FACTUAL ALLEGATIONS

20 5.1 Common Course of Conduct. Defendants have engaged in, and continue to
21 engage in, a common course of wage and hour abuse against non-managerial installation
22 technicians in the state of Washington.

23 5.2 Overtime. Defendants' common course of wage and hour abuse includes
24 routinely failing to record and compensate non-managerial installation technicians for all hours
25 worked. In particular, Defendants have required or permitted non-managerial installation
26 technicians to record fewer hours than they actually worked in order to avoid paying overtime

1 premiums. Defendants have had actual or constructive knowledge of the fact that non-
2 managerial installation technicians are not being compensated for all hours worked, including
3 overtime hours.

4 5.3 Off-the-Clock Work. Defendants' common course of wage and hour abuse
5 includes routinely failing to compensate non-managerial installation technicians for off-the-
6 clock work. For example, Defendants regularly fail to provide non-managerial installation
7 technicians with meal periods, yet Defendants require or permit the technicians to deduct meal
8 time from their records of hours worked. Defendants also require or permit non-managerial
9 installation technicians to do other work off the clock, such as completing paperwork and forms
10 and calling customers. As a result of this off-the-clock work, Defendants' non-managerial
11 installation technicians are deprived of wages, including overtime wages. Defendants have had
12 actual or constructive knowledge of the fact that non-managerial installation technicians are not
13 being compensated for off-the-clock work.

14 5.4 Rest and Meal Periods. Defendants' common course of wage and hour abuse
15 includes routinely failing to provide non-managerial installation technicians with rest and meal
16 periods as required by law. Defendants have had actual or constructive knowledge of the fact
17 that non-managerial installation technicians are not being allowed proper rest and meal periods.

18 5.5 Wage Deductions. Defendants' common course of wage and hour abuse
19 includes routinely making improper deductions from the wages of non-managerial installation
20 technicians. This includes but is not necessarily limited to the following: deductions for the
21 purchase of tools and equipment that are required or necessary to perform the job; deductions
22 for loss or damage of tools and equipment that are required or necessary to perform the job;
23 deductions for cell phones that are required or necessary to perform the job; deductions for the
24 purchase of uniforms; deductions for insurance on company vehicles. In addition, Defendants
25 require non-managerial installation technicians to pay for the fuel necessary to transport
26 company vehicles to and from job sites. These fuel expenses are incurred in the furtherance of

Defendants' interest because transportation to and from job sites is incident of and necessary to the technicians' employment. Defendants fail to fully reimburse the non-managerial installation technicians for those fuel expenses and as a result, the unreimbursed out-of-pocket expenses are essentially deducted from the wages of the technicians. Defendants derive a financial profit or benefit from all of these deductions. Defendants have had actual or constructive knowledge of the fact that these deductions are being taken from the wages of non-managerial installation technicians.

5.6 Paid Time Off Benefits. Defendants' common course of wage and hour abuse includes routinely failing to compensate non-managerial installation technicians for paid time off benefits they have earned but not yet received at the time employment is terminated. Defendants have had actual or constructive knowledge of the fact that non-managerial installation technicians are not being compensated for these paid time off benefits.

VI. FIRST CLAIM FOR RELIEF
(Violations of RCW 49.46.130 and WAC 296-128-550 —
Failure to Pay Overtime)

6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

6.2 RCW 49.46.130 provides that "no employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

6.3 WAC 296-128-550 provides that "employees who are compensated on a . . . piece rate . . . basis, rather than an hourly wage rate, unless specifically exempt, are entitled to one and one-half times the regular rate of pay for all hours worked in excess of 40 per week."

6.4 WAC 296-128-550 further provides that overtime "may be paid at one and one-half times the piecework rate during the overtime period, or the regular rate of pay may be determined by the amount of compensation received per week by the total number of hours

1 worked that week. The employee is entitled to one and one-half times the regular rate arrived
2 at for all hours worked in excess of 40 per week.”

3 6.5 By the actions alleged above, including the failure to pay non-managerial
4 technicians for all hours worked in excess of 40 per week, Defendants have violated the
5 provisions of RCW 49.46.130 and WAC 296-128-550.

6 6.6 As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
7 deprived of compensation in amounts to be determined at trial and pursuant to RCW 49.46.090,
8 Plaintiffs and the Class are entitled to recovery of such damages, including interest thereon, as
9 well as attorneys’ fees and costs.

10 **VII. SECOND CLAIM FOR RELIEF**
11 **(Violations of RCW 49.46.090 and WAC 296-126-021 —**
12 **Failure to Pay Minimum Wage)**

13 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set
14 forth in the preceding paragraphs.

15 7.2 RCW 49.46.090 provides that employers must pay employees all wages to
16 which the employees are entitled under the Washington Minimum Wage Act. If the employer
17 fails to do so, RCW 49.46.090 requires that the employer pay the employees the full amount of
18 the statutory minimum wage rate less any amount actually paid to the employee.

19 7.3 WAC 296-126-021 provides that where employees are paid on a piecework
20 basis, wholly or partially, “[t]he total wages paid for such period shall be computed on the
21 hours worked in that period resulting in no less than the applicable minimum wage rate.”

22 7.4 By the actions alleged above, including the failure to pay non-managerial
23 technicians for all hours worked per week, Defendants have violated the provisions of
24 RCW 49.46.090 and WAC 296-126-021.

25 7.5 As a result of the unlawful acts of Defendants, Plaintiffs and Class members
26 have been deprived of compensation in amounts to be determined at trial and, pursuant to

RCW 49.46.090, are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees and costs.

VIII. THIRD CLAIM FOR RELIEF
(Violations of RCW 49.12.020 and WAC 296-126-092 —
Failure to Provide Rest and Meal Periods)

8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

8.2 RCW 49.12.010 provides that "[t]he welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect."

8.3 RCW 49.12.020 provides that "[i]t shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health."

8.4 Pursuant to RCW 49.12.005 and WAC 296-126-002, conditions of labor "means and includes the conditions of rest and meal periods" for employees.

8.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest and meal periods during their shifts.

8.6 By the actions alleged above, including the failure to provide non-managerial installation technicians with proper rest and meal periods, Defendants have violated the provisions of RCW 49.12.020 and WAC 296-126-092.

8.7 As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and the Class are entitled to the recovery of such damages, including interest thereon, as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

IX. FOURTH CLAIM FOR RELIEF
(Violations of RCW 49.48.010 —
Failure to Pay Wages Owed at Termination)

9.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

9.2 RCW 49.48.010 provides that “[w]hen any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period.”

9.3 The term “wages” includes back pay, paid time off benefits, and other compensation due to an employee by reason of employment.

9.4 By the actions alleged above—including the failure to compensate non-managerial installation technicians for all hours worked (such as overtime and off-the-clock work), the failure to compensate technicians for missed rest breaks, and the failure to compensate technicians for earned but unused paid time off benefits—Defendants have violated the provisions of RCW 49.48.010.

9.5 As a result of Defendants’ unlawful acts, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and Class members are entitled to such damages, including interest thereon, as well as attorneys’ fees pursuant to RCW 49.48.030 and costs.

X. FIFTH CLAIM FOR RELIEF
(Violations of RCW 49.48.010, RCW 49.12.450, and WAC 296-126-025 —
Unlawful Deductions from Final Wages)

10.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

10.2 RCW 49.48.010 provides that it is unlawful “for any employer to withhold or divert any portion of an employee’s wages.”

10.3 RCW 49.12.450 provides that employers may not make deductions from employee wages for uniforms.

10.4 WAC 296-126-025 provides that an employer may not make deductions from an employee's final wages except in limited circumstances.

10.5 By the actions alleged above, Defendants have violated the provisions of RCW 49.48.010, RCW 49.12.450, and WAC 296-126-025.

10.6 As a result of Defendants' unlawful acts, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and Class members are entitled to such damages, including interest thereon, as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

XI. SIXTH CLAIM FOR RELIEF
(Violations of RCW 49.12.020, RCW 49.12.450, and WAC 296-126-028 —
Unlawful Deductions from Wages During Ongoing Employment)

11.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

11.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

11.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health.”

11.4 Improper deductions constitute a withholding of wages that renders the wages “inadequate” under RCW 49.12.010.

11.5 RCW 49.12.450 provides that employers may not make deductions from employee wages for uniforms.

11.6 WAC 296-126-028 provides that an employer may not make deductions from an employee's wages during ongoing employment except in limited circumstances.

11.7 By the actions alleged above, Defendants have violated the provisions of RCW 49.12.020, RCW 49.12.450, and WAC 296-126-028.

11.8 As a result of the wrongful acts of Defendants, Plaintiffs and Class members have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and Class members are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

XII. SEVENTH CLAIM FOR RELIEF
(Violation of RCW 49.52.050 —
Willful Refusal to Pay Wages)

12.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

12.2 RCW 49.52.050 provides that any employer or agent of any employer who, “[w]ilfully and with intent to deprive the employee of any party of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract” shall be guilty of a misdemeanor. The statute further provides that any employer or agent of any employer who “[s]hall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee” shall be guilty of a misdemeanor.

12.3 Defendants' violations of RCW 49.46.130 and WAC 296-128-550, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

12.4 Defendants' violations of RCW 49.46.090 and WAC 296-126-021, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

12.5 Defendants' violations of RCW 49.12.020 and WAC 296-126-092, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

12.6 Defendants' violations of RCW 49.48.010, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

12.7 Defendants' violations of RCW 49.48.010, RCW 49.12.450, and WAC 296-126-025, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

12.8 Defendants' violations of RCW 49.12.020, RCW 49.12.450, and WAC 296-126-028, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

12.9 RCW 49.52.070 provides that any employer who violates the provisions of RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, attorneys' fees, and costs.

12.10 By the actions alleged above, Defendants have violated the provisions of RCW 49.52.050.

12.11 As a result of the willful, wrongful acts of Defendants, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial and pursuant to RCW 49.52.070, Plaintiffs and the Class are entitled to recovery of twice such damages, including interest thereon, as well as attorneys' fees and costs.

XIII. EIGHTH CLAIM FOR RELIEF (Breach of Contract)

13.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

13.2 Defendants' written paid time off policy constituted a unilateral contract offer to Plaintiffs and Class members.

13.3 Plaintiffs and Class members accepted and provided consideration for Defendants' offer by performing work for Defendants, thereby executing the contract.

13.4 Defendants breached the contract by failing to compensate Plaintiff Whittenborn and other Class members for the paid time off benefits that had been earned but not yet received at the time employment terminated.

13.5 As a result of the wrongful acts of Defendants, Plaintiff Whittenborn and Class members have been deprived of compensation in amounts to be determined at trial, and

1 Plaintiff Whittenborn and Class members are entitled to recovery of such damages, including
2 interest thereon, as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

3 **XIV. NINTH CLAIM FOR RELIEF**
4 **(Violation of RCW 19.86.010 – .920 —**
5 **Unfair or Deceptive Acts or Practices)**

6 14.1 Plaintiffs reallege and incorporate by reference each and every allegation set
7 forth in the preceding paragraphs.

8 14.2 Defendants have engaged in unfair or deceptive acts or practices by engaging in
9 the following courses of conduct: (i) failing to pay non-managerial installation technicians for
10 all hours worked, including overtime; (ii) requiring or permitting non-managerial installation
11 technicians to work off the clock; (iii) failing to maintain true and accurate time records; (iv)
12 failing to provide non-managerial installation technicians with proper rest and meal breaks; (v)
13 improperly deducting expenses from the wages of non-managerial installation technicians; (vi)
14 failing to compensate non-managerial installation technicians for paid time off benefits they
15 have earned but not yet received at the time employment is terminated; (vii) violating RCW
16 49.46.130 and WAC 296-128-550; (viii) violating RCW 49.46.090 and WAC 296-126-021;
17 (ix) violating RCW 49.12.020 and WAC 296-126-092; (x) violating RCW 49.48.010; (xi)
18 violating RCW 49.12.450; (xii) violating WAC 296-126-025 and WAC 296-128-028; and (xiii)
19 violating RCW 49.52.050.

20 14.3 Defendants' unfair and deceptive acts and practices repeatedly occurred in
21 Defendants' trade or business and were capable of deceiving a substantial portion of the public,
22 particularly since Defendants solicit non-managerial installation technicians from Washington's
23 general labor market.

24 14.4 Defendants unfair and deceptive acts and practices affect the public interest
25 because they are a repeated part of Defendants' general course of business and have impacted
26 numerous individuals. Moreover, Defendants receive services from non-managerial
installation technicians for which Defendants do not pay, unlike Defendants' competitors.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the Class, pray for judgment against Defendants as follows:

15.2 A declaration that Defendants are financially responsible for notifying all Class members of its wage and hour violations;

15.4 Appoint the undersigned counsel as counsel for the Class;

15.6 Enjoin Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, as provided by law, engaging in the unlawful and wrongful conduct set forth herein;

15.8 Award Plaintiffs and the Class attorneys' fees and costs, as allowed by law;

15.10 Grant such other and further relief as the Court deems necessary, just, and proper.

XVI. JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED this 1st day of May, 2009.

TERRELL MARSHALL & DAUDT PLLC

By: 

Beth E. Terrell, WSBA #26759

Email: bterrell@tmdlegal.com

Toby J. Marshall, WSBA #32726

Email: tmarshall@tmdlegal.com

Jennifer R. Murray, WSBA #36983

Email: jmurray@tmdlegal.com

3600 Fremont Avenue North

Seattle, Washington 98103

Telephone: 206.816.6603

Facsimile: 206.350.3528

THE SCOTT LAW GROUP, PS

Darrell W. Scott, WSBA #20241

Email: darrellscott@mac.com

Matthew J. Zuchetto, WSBA #33404

Email: matthewzuchetto@mac.com

926 West Sprague Avenue, Suite 680

Spokane, Washington 99201

Telephone: 509.455.3966

Facsimile: 509.455.3906

Attorneys for Plaintiffs